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TATTERSON *v.* FIDELITY & DEPOSIT CO. OF MARYLAND.

Sept. 11, 1913.

[79 S. E. 334.]

**Principal and Surety (§ 183\*)—Rights of Surety against Principal—Building Contract.**—Where a contractor for the construction of a building abandoned his contract before completion, and the surety company which had given the contractor's bond, although notified of the abandonment, did not complete the building or employ others to do so, but instead the owners of the building entered into a contract with another contractor, who frequently completed contracts for the surety company and who agreed to complete the building for the balance due the first contractor and gave a bond executed by the same surety company, the surety company could not hold the estate of the first contractor liable for the loss sustained by the second contractor and which it voluntarily paid to him.

[Ed. Note.—For other cases, see *Principal and Surety*, Cent. Dig. §§ 539-544; Dec. Dig. § 183.\* 13 Va.-W. Va. Enc. Dig. 59; 14 Va.-W. Va. Enc. Dig. 989; 15 Va.-W. Va. Enc. Dig. 971.]

Appeal from Court of Law and Chancery of City of Norfolk. Suit by Fidelity & Deposit Company of Maryland against Lizzie M. Tatterson, as executrix of the estate of Albert Tatterson, deceased, to establish a claim against the said estate and subject thereto certain property held by the executrix. Decree for the plaintiff, and defendant appeals. Reversed and remanded.

*R. R. Hicks*, of Norfolk, for appellant.

*J. W. Happer* and *Frank L. Crocker*, both of Portsmouth, for appellee.

VIRGINIA COAL & IRON CO. *v.* HYLTON et al.

Sept. 11, 1913.

[79 S. E. 337.]

**1. Mines and Minerals (§ 55\*)—Tenancy in Common (§ 8\*)—Severance from Suffrage—Joint Tenants.**—The general owner or owners of land may grant all the minerals therein or any particular species of them, while still retaining title to the surface, or they may grant the land and reserve the minerals, thus creating a separate estate in the minerals, distinct from the land in which they are found; but, where the land is owned by joint tenants, a conveyance by less than all does not effect a severance of the mineral interest from the surface, but

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.